

of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraphs (1) and (2).

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility requirements specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(iii) The extent to which assistance under this chapter would foster innovative public-private partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under this chapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) The extent to which the project uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project.

(vi) The amount of budget authority required to fund the Federal credit instrument made available under this chapter.

(vii) The extent to which the project helps maintain or protect the environment.

(viii) The extent to which assistance under this chapter and chapter 1 would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—

For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the project's senior obligations, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating.

(c) FEDERAL REQUIREMENTS.—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with the funds:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(2) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 243, §182; renumbered §602 and

amended Pub. L. 109-59, title I, §§1601(b), (c), 1602(b)(2), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(2), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(3), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

AMENDMENTS

2005—Pub. L. 109-59, §1602(d), renumbered section 182 of this title as this section.

Subsec. (a). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(1). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Pub. L. 109-59, §1601(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “The project—

“(A) shall be included in the State transportation plan required under section 135; and

“(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.”

Subsec. (a)(2). Pub. L. 109-59, §1601(b)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.”

Subsec. (a)(3)(A). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 109-59, §1601(b)(2), substituted “\$50,000,000” for “\$100,000,000”.

Subsec. (a)(3)(A)(ii). Pub. L. 109-59, §1601(b)(3), substituted “33½” for “50”.

Subsec. (a)(3)(B). Pub. L. 109-59, §1601(b)(4), substituted “\$15,000,000” for “\$30,000,000”.

Subsec. (a)(4). Pub. L. 109-59, §1601(b)(5), substituted “The Federal credit instrument” for “Project financing” and inserted “that also secure the project obligations” before period at end.

Subsec. (b)(1). Pub. L. 109-59, §1601(c)(1), substituted “eligibility requirements” for “eligibility criteria”.

Subsec. (b)(2)(A)(iii), (iv), (vi). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (b)(2)(A)(viii). Pub. L. 109-59, §1602(b)(2), inserted “and chapter 1” after “this chapter”.

Subsec. (b)(2)(B). Pub. L. 109-59, §1601(c)(2), inserted “, which may be the Federal credit instrument,” after “obligations”.

Subsec. (c). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602; or

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602; or

(C) to refinance long-term project obligations or Federal credit instruments if such refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The execution of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of 33 percent of the reasonably anticipated eligible project costs or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

(3) PAYMENT.—The secured loan—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(4) INTEREST RATE.—The interest rate on the secured loan shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(5) MATURITY DATE.—The final maturity date of the secured loan shall be not later than 35 years after the date of substantial completion of the project.

(6) NONSUBORDINATION.—The secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(c) REPAYMENT.—

(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) SALE OF SECURED LOANS.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) LOAN GUARANTEES.—

(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 245, §183; renumbered §603 and amended Pub. L. 109-59, title I, §§1601(d), 1602(b)(3), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247.)

AMENDMENTS

2005—Pub. L. 109-59, §1602(d), renumbered section 183 of this title as this section.

Subsec. (a)(1). Pub. L. 109-59, §1601(d)(1), in subpars. (A) and (B) inserted “of any project selected under section 602” after “costs”, added subpar. (C), and struck out concluding provisions which read as follows: “of any project selected under section 182.”

Subsec. (a)(3). Pub. L. 109-59, §1602(b)(3), substituted “602(b)(2)(B)” for “182(b)(2)(B)”.

Subsec. (a)(4). Pub. L. 109-59, §1601(d)(2), substituted “The execution” for “The funding” and struck out before period at end “, except that—

“(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

“(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency”.

Subsec. (b)(2). Pub. L. 109-59, §1601(d)(3)(A), inserted “the lesser of” before “33 percent” and “or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations” before period at end.

Subsec. (b)(3)(A)(i). Pub. L. 109-59, §1601(d)(3)(B), inserted “that also secure the senior project obligations” after “sources”.

Subsec. (b)(4). Pub. L. 109-59, §1601(d)(3)(C), struck out “marketable” before “United States Treasury securities”.

Subsec. (b)(8). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (c)(3) to (5). Pub. L. 109-59, §1601(d)(4), redesignated pars. (4) and (5) as (3) and (4), respectively, in par. (3)(A), struck out “during the 10 years” after “at any time”, in par. (3)(B)(ii), substituted “loan” for “loan beginning not later than 10 years after the date of substantial completion of the project in accordance

with paragraph (1)”, and struck out heading and text of former par. (3). Text read as follows: “The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.”

§ 604. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the project's senior obligations receiving an investment-grade rating from at least 1 rating agency.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNTS.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities as of the date of execution of the line of credit agreement.

(5) SECURITY.—The line of credit—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and